

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

SEATON CORP. d/b/a STAFF MANAGEMENT

Employer¹

and

Case 14-RC-12615

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

Petitioner

REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

PPG Industries, Inc., here called PPG, with a facility located in O'Fallon, Missouri, is engaged in the manufacturing and installation of metal frames and other upgrades for glass products in the automobile industry. Seaton Corp. d/b/a Staff Management, here called Staff Management, is engaged in providing staffing services to PPG at its O'Fallon facility. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the production and maintenance employees jointly employed by PPG and Staff Management. A hearing officer of the Board held a hearing and the parties filed briefs, which I have considered.

As evidenced at hearing and in the briefs, the parties disagree on one issue: whether PPG is a joint employer with Staff Management of the petitioned-for unit of employees. Both PPG and Staff Management contend that PPG is not a joint employer

¹ While the petition named PPG Industries, Inc. as a joint employer with Seaton Corp. d/b/a Staff Management, the Employer's name reflects my finding that there is no joint employer relationship. The employers' names appear as amended at hearing.

rather the unit employees are solely employed by Staff Management. The Petitioner, contrary to PPG and Staff Management, contends they are joint employers. There is no dispute as to the appropriateness of the petitioned-for unit, which includes 116 full-time and regular part-time production and maintenance employees.²

I have considered the evidence and the arguments presented by the parties on the joint employer issue. As discussed below, I have concluded that Staff Management is the sole employer of the petitioned-for unit employees and that PPG should be dismissed from the petition. Accordingly, I have directed an election in a unit that consists of approximately 116 employees employed by Staff Management at PPG's O'Fallon, Missouri facility.³

I. OVERVIEW OF OPERATIONS

PPG owns the O'Fallon facility, including the manufacturing equipment. PPG also owns other facilities throughout the United States, which are not at issue here. PPG receives at its O'Fallon facility automobile glass windshields and other automotive glass products that are manufactured at other PPG factories. Staff Management's production employees then install metal frames and additions or upgrades, such as defrosters, antennas, rain sensors, and other coatings, to the glass products pursuant to orders from PPG's automotive customers - General Motors, Chrysler, and Toyota. The O'Fallon facility operates 14 production lines, each specifically outfitted to a particular automotive customer's product. PPG employs the following seven employees at the O'Fallon facility: plant manager, logistics manager, quality control manager, two

² A Staff Management witness testified that there are 116 employees in the petitioned-for unit, which includes production employees, three maintenance employees, forklift operators, and quality control technicians. The Petitioner does not dispute this testimony.

³ The Petitioner agreed to proceed to an election in the petitioned-for unit if the Regional Director directed an election with Staff Management as the Employer.

quality control technicians, and two maintenance employees. No PPG employee performs work on the production lines.

Beginning in 2001, PPG and Staff Management entered into an "Operational Services Agreement," which provides for Staff Management to supply all the staffing for operating PPG's O'Fallon facility, including all labor, related personnel functions, materials, equipment, and items necessary to perform the staffing service.

In addition to the 116 production and maintenance employees, including quality control technicians and forklift operators, Staff Management employs a senior account manager, two account managers, three floor supervisors, a recruiter, and between 4 and 10 clerical employees, whom the Petitioner does not seek to represent, at PPG's O'Fallon facility. Staff Management's production and maintenance employees are directly supervised on a daily basis by Staff Management managers and supervisors in the installation of the metal frames, additions, or upgrades to the automotive glass windows. The three Staff Management maintenance employees perform adjustments and preventive maintenance on the production equipment that is owned by PPG, and the Staff Management quality control employees perform inspections of the products at the production line as well as the packing and shipping stages.

Each week PPG receives orders from its automotive customers for a specific number of products. Those orders are put on an Excel spreadsheet, either by PPG's logistics manager or by a Staff Management clerical, creating a production schedule for the week. The production schedule is then reviewed by Staff Management's account managers, who create a work schedule setting out which production lines will operate, the number of hours and days the lines will operate, and the employees assigned to the production lines. PPG personnel have no input into the work schedule after providing the customer orders for the week. Subsequent to placing an initial order, customers frequently submit changes to PPG, which changes are then communicated to Staff

Management, who updates the production schedule and adjusts employees' work schedules including overtime and line assignments.

Each day at approximately 9:30 a.m. and again at 1 p.m., Staff Management's managerial and supervisory employees attend meetings with PPG's managerial staff. The purpose of the morning meeting is to discuss production schedules, quality control problems, and any other production issues that need to be communicated. The purpose of the afternoon meeting is to update the production schedule for the evening shift and the next day. Changes in production orders are discussed during these meetings and often result in a change in previously scheduled work hours to cancel or add overtime work to meet production needs.

If customers have any complaints with the finished product, they report them directly to PPG, not Staff Management. PPG's Quality Control personnel then inspect the problem product and communicate the complaint to Staff Management, who informs its employees of the complaint. After corrections are made by Staff Management employees, Staff Management quality control employees reinspect the product for compliance. Under the "Operational Services Agreement," Staff Management can be financially liable to PPG or its customers if Staff Management's failure to fulfill its contract with PPG causes loss of production to a customer.

II. ANALYSIS

The existence of a joint-employer relationship is essentially a factual issue that depends on the control that one employer exercises over the labor relations of another employer. *M. B. Sturgis, Inc.*, 331 NLRB 1298, 1301 (2000), overruled on other grounds by *Oakwood Care Center*, 343 NLRB No. 76 (2004); *Laerco Transportation*, 269 NLRB 324 (1984); *TLI, Inc.*, 271 NLRB 798 (1984), *enfd.* 772 F.2d 894 (3rd Cir. 1985); *Rawson Contractors*, 302 NLRB 782 (1991). "To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment

relationship such as hiring, firing, discipline, supervision, and direction.” *National Metal Processing, Inc.*, 331 NLRB 866, 869 (2000), quoting *Laerco Transportation*, supra at 325.

Staff Management, without any input from or approval by PPG, hires all of its employees to work at the O’Fallon facility. Staff Management uses a sister company, People Scout, to assist in Staff Management’s recruitment. When hiring, Staff Management uses various advertising formats that provide an “800” number answered by the People Scout call center in Chicago, Illinois. Applicants answer a few questions over the telephone and, based on their responses, their applications are further processed. Applicants can also apply directly at the O’Fallon facility where Staff Management’s on-site recruitment manager interviews applicants, administers a basic skills test, advises the applicant of the job expectations, provides information on employment with Staff Management including the wages and benefits, makes offers of employment, and then conducts orientation for new employees.⁴ Staff Management requires employees to sign “Employee Agreements,” which are not authorized or reviewed by PPG. Staff Management issues employee paychecks and maintains personnel files and computer records on its employees on its own Staff Track software. PPG has no access to these records. Moreover, employee complaints regarding their working conditions are made to and addressed by Staff Management without consultation with PPG. While Section 4.2.6 of the “Operational Services Agreement” provides that PPG has the right to remove a Staff Management employee from its

⁴ At hearing and on brief, the Petitioner asserted that PPG had input into Staff Management’s hiring of the daughter of the PPG plant manager who did not go through Staff Management’s normal hiring and orientation process. This assertion was based on one employee’s testimony that the employee did not observe the daughter attending an orientation. Absent further evidence that the daughter did not go through other Staff Management hiring procedures, I find that one instance to be inconsequential to my conclusion that PPG has no input in Staff Management’s hiring decisions.

O'Fallon facility, PPG has never exercised or attempted to exercise that authority. See, *National Metal Processing, Inc.*, supra at 869.

When Staff Management employees want to take vacation or other time off, they complete Staff Management request forms and submit them to their Staff Management manager or supervisor who approves or denies it without PPG input or approval. Employees are required to only call Staff Management telephones lines when calling in absent or tardy. Witnesses for the Petitioner testified that Staff Management floor supervisors have told employees that PPG had instructed the supervisors not to let employees leave early from their shifts. An employee witness also testified that on one occasion when an employee needed to leave early the floor supervisor told the employees that she had spoken with PPG's logistics manager about the employee's need to leave early and the PPG logistics manager had adjusted the production numbers so that the employee could leave early. While this testimony was offered to show that PPG has input into production employees' working hours, the testimony at best indicates that PPG was aware that production hours for which PPG pays Staff Management were not being worked in their entirety. I conclude that PPG's actions are not those of a joint employer directing employees' hours; rather in these instances PPG is acting as Staff Management's customer to ensure that Staff Management is providing the services for which PPG has paid. "An employer receiving contracted labor services will of necessity exercise sufficient control over the operations of the contractor at its facility so that it will be in a position to take action to prevent disruption of its own operations or to see that it is obtaining the services it contracted for. It follows that the existence of such control, is not in and of itself, sufficient justification for finding that the customer-employer is a joint employer of its contractor's employees." *Southern California Gas Co.*, 302 NLRB 456, 461 (1991).

Staff Management determines employees' wage rates and created its raise system providing for a starting rate and time-based increases without input from or negotiating with PPG. Staff Management provides its employees with its own health insurance benefits, which are those provided to all Staff Management employees nationwide. These benefits are not provided to PPG personnel at the O'Fallon facility. Staff Management maintains its own workers' compensation policy and is responsible for any Staff Management employee's on-the-job injuries.

Staff Management has its own attendance, vacation, dress code, rules of conduct and progressive discipline policies, which were created without PPG's input or approval. PPG also has no input into the enforcement of those policies. Staff Management conducts its own safety and other training of Staff Management employees although PPG personnel may attend. Most training is held pursuant to OSHA requirements. On one occasion in the last year, a PPG trainer conducted OSHA-required hazardous material training at the O'Fallon facility that was attended by all Staff Management and PPG personnel. The PPG trainer conducted similar training at other PPG facilities throughout the country. Following this training, Staff Management's recruiter, who also handles employee training, distributed additional training materials to its production and maintenance employees and required the employees to take a test over the materials that was returned to and graded by the recruiter. PPG personnel did not participate in this training and testing.

Each week PPG receives customer orders that are compiled into a production schedule on an Excel spreadsheet by a PPG manager or a Staff Management clerical employee. Staff Management then creates a work schedule based on the production schedule and, without PPG's input or approval, determines which production lines will operate, how many hours of production are needed, and assigns employees to the lines.

Frequently, Staff Management is required to make changes to the production schedule and the resulting work schedules as a result of PPG's customers changing their orders.

To meet its staffing commitments to PPG under the "Operational Services Agreement," Staff Management operates two shifts. Between 80 and 87 production employees are assigned to the first shift where they are supervised by three Staff Management floor supervisors, the senior account manager, and an account manager. The second shift employs about 30 to 33 production employees who are supervised by a Staff Management account manager. Staff Management employees are required to "check-in" at the beginning of each shift with a Staff Management account manager or floor supervisor to ensure their attendance. PPG personnel are not required to do so nor are Staff Management employees required to check-in with any PPG staff. One Staff Management maintenance employee works on each shift and the third works a shift split between the day and evening shifts. PPG's personnel, including maintenance, are at the O'Fallon facility between about 6 a.m. and 6 p.m., and generally there are no PPG personnel at the facility after 6 p.m. Staff Management employees are responsible for opening and closing the facility.

Based on production needs, Staff Management decides whether overtime is necessary, including whether the facility should be opened earlier or closed later in order to meet production requirements, and assigns overtime, without PPG's input or approval. The Petitioner presented witnesses who testified that floor supervisors have told Staff Management production employees when assigned overtime has been cancelled that PPG made the decision to do so. One Petitioner witness asserted that this occurred on a daily basis but could provide no specific evidence of which PPG employee made this decision or the circumstances surrounding the overtime cancellation. Furthermore, several employee witnesses testified that overtime was ordered or cancelled based on PPG's customers production orders increasing or changing. The Petitioner also

presented testimony that on one occasion the PPG plant manager told Staff Management employees that he would not pay for overtime and to go home. The witness further testified, however, that he first requested permission from his Staff Management supervisor before leaving. Moreover, this testimony corroborates that overtime was ordered by Staff Management and the order was disseminated to employees without PPG's knowledge or consent. One employee witness also testified that in her 2 years of employment she could recall only one occasion where PPG staff spoke directly to Staff Management employees telling them that scheduled Saturday overtime was cancelled because the employees had diligently met production needs during regularly scheduled work hours. Accordingly, I give these employee witnesses' hearsay testimony that their floor supervisors told them that PPG had scheduled or cancelled overtime little evidentiary weight as other record evidence disclosed that decisions to schedule or cancel overtime are based on changes in customers' orders rather than on PPG's control over labor costs or employees' terms and condition of employment.

PPG's customers place production orders and make quality complaints directly to PPG and have no direct contact with Staff Management. When customers make complaints to PPG about the quality of a product, PPG's quality control technicians go to the production floor and inspect the problem product. At times, PPG quality control technicians will also go to the production line responsible for the problem product and attempt to determine if the quality issue is a result of the raw material, the production equipment, or the production employees' performance. PPG also advises Staff Management of the customer complaint and, if in writing, a copy of the complaint is provided to Staff Management. A Staff Management manager then takes the written complaint to the production line employees from which the faulty product came, and each employee is required to sign the complaint form. The complaint form is then

posted at the head of the production line for the time period that the faulty product is run. At no time has PPG disciplined or caused Staff Management to discipline an employee because of a customer complaint.

Product quality issues also can arise through Staff Management's quality control technicians' inspection of the product during the production process, when the product is packaged, and when shipped. Staff Management production employees are also responsible for inspecting the raw material throughout the production process by looking for faults in the material or in the product while it is being produced. When a problem is discovered by a Staff Management employee, it is reported to the Staff Management floor supervisor, who then reports the problem to PPG's quality control manager or technicians. As with a customer complaint, the PPG quality control manager or technician inspects the problem and determines whether the product can be forwarded to the customer or must be rejected and a resolution sought. If the problem is due to the production equipment, Staff Management maintenance employees are called to make adjustments to the equipment. PPG quality control technicians do not reinspect the faulty product for correction rather, after the error or problem has been addressed by Staff Management, reinspection of the corrected product is performed by Staff Management's quality control technicians.

The Petitioner presented a Staff Management production employee who testified that he had been removed from his assigned production line after several of the products from his line were found faulty. The witness testified that his Staff Management floor supervisor told him he was reassigned at PPG's request. The witness further testified that when the problem arose, PPG's quality control technicians came to his work station and instructed him to perform additional visual inspections. The witness testified that his Staff Management floor supervisor told him not to perform the additional inspections as it slowed down production. Soon after, when seeing the PPG plant manager on the

production floor with the Staff Management senior account manager, the employee told the PPG plant manager about the differing instructions. The PPG plant manager instructed the employee to perform the extra inspections. The witness was not disciplined for failing to observe the faults in the raw material but rather was moved to another production line for a short time and then returned to his original production line. Instructing an employee to perform inspections on the product known to have had numerous faults in the raw material is certainly not the type of supervision that would make PPG an employer of the employee performing the inspection. This is merely routine direction to perform the work as it should be performed. Furthermore, there is no evidence that the PPG instructions were different from what the employee was expected to do in the normal course of his duties when performed correctly. See, *Island Creek Coal Co.*, 279 NLRB 858, 864 (1986) (occasional instruction on various tasks insufficient to constitute a joint employer relationship because merely routine direction); *Oscro Drug*, 294 NLRB 779, 787 (1989) (evaluation of contractor's employee's performance and the infrequent request to remove a contractor's employee from its account insufficient to establish that employer disciplined its contractor's employees or made the employer a joint employer with its contractor).

Other employee witnesses testified that when quality control issues have arisen on their production lines, PPG's quality control technicians have come out to the production line and spoken to the employees about the problem and given direction on how to perform their jobs. One witness testified that she has reported quality problems to her floor supervisor with some regularity and that each time the floor supervisor has reported this to PPG's quality control technicians, who then have come to the production floor to observe the problem. One employee testified that PPG quality technicians have thanked him for finding errors in the product. Employee witnesses also testified that PPG employees, including the plant manager, quality control employees and the

logistics manager, are seen on the production floor on a daily basis walking around the production lines, observing employees at work, and talking to employees about their performance. However, there are no PPG employees on the site at all during the last 5 or 6 hours of the second shift. Staff Management's account managers and floor supervisors are also on the production floor on a daily basis. Staff Management managers work out of an office on the production floor that is easily accessible to production employees. The floor supervisors work from desks that are in the area of their assigned production lines. At no time are Staff Management production and maintenance employees directly supervised by PPG personnel. The presence of PPG's personnel on the production floor observing production and talking to Staff Management employees about their work is PPG's right as the owner of the facility to ensure that the ultimate product is satisfactory and is not an attempt to direct Staff Management or its employees as to the means used to meet that goal. Accordingly, the presence of PPG personnel on the production floor observing production does not establish a joint employer relationship. See, *Cabot Corp.*, 223 NLRB 1388, 1389 (1976), *affd. sub nom. International Chemical Workers Union Local 483 v. N.L.R.B.*, 561 F.2d 253 (D.C. Cir. 1977); *Southern California Gas Co.*, *supra*.

In support of its contention that PPG and Staff Management are joint employers, the Petitioner relies on *Elliott Turbomachinery Co. and F.S.-Elliot Company, LLC*, 2005 WL 936638 (N.L.R.B.G.C.), an Advice Memorandum finding joint employer status. Specifically, the Petitioner relies on the criteria that PPG owns the facility, equipment, and material on which Staff Management employees perform the work. Apart from the fact that an Advice Memorandum has no precedential value in this context, the Petitioner's reliance is misplaced where other than ownership of the facility, equipment, and materials, PPG exercises none of the other control factors found to be exercised by the employers in *Elliott Turbomachinery*, *supra*. Unlike the case here, the labor supplier,

Elliott, was reimbursed by the contractor, F.S.-Elliott, for the direct wages, salaries, and benefits paid employees. Moreover, the contractor provided direct supervision, made work assignments based on a list it generated reflecting job completion priority, granted employee time off requests, assigned employees to fill temporary vacancies due to vacation or time off, determined when overtime was necessary and assigned employees overtime, decided the number of employees to be leased each month and the specific employees to be leased, and effectively recommended the discipline and reassignment of an employee. Clearly, the facts here differ dramatically from those in the case relied on by the Petitioner and, accordingly, I find that case is inapposite.

In sum, the evidence shows that Staff Management exercises virtually exclusive control over all elements of the terms and conditions of employment of the unit employees. Staff Management, without input from PPG, makes all decisions related to hiring, firing, and discipline and maintains all employee personnel files; determines wage rates and benefits, including workers' compensation; determines job assignments and makes all staffing and scheduling determinations, including overtime; formulates and enforces rules of conduct, attendance, dress code, and disciplinary policies; grants unit employees' vacation and time off requests and adjusts schedules to cover absent employees; and provides daily supervision; compensates employees; and conducts employee safety and other training. The Petitioner's assertions do not weaken the overwhelming evidence that Staff Management clearly exercises control over unit employees' terms and conditions of employment. PPG's control is minimal and primarily indirect, generally related to ensuring the quality of the product and not the supervision or direction of the unit employees. *National Metal Processing, Inc.*, supra.; *Southern California Gas Co.*, supra; *Island Creek Coal Co.*, supra; *TLI, Inc.*, supra; *Cabot Corp.*, supra. But see, *Sun-Maid Growers of California*, 239 NLRB 346 (1978), enf'd. 618 F.2d 56 (9th Cir. 1980); *Hamburg Industries*, 193 NLRB 67, 68 (1971). Accordingly, I find that

Staff Management is the sole Employer of the petitioned-for employees; and I further find that PPG is not a joint employer of the unit employees and, therefore, I am dismissing PPG from the petition.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Seaton Corp. d/b/a Staff Management, the Employer involved here, is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by Seaton Corp. d/b/a Staff Management at PPG Industries, Inc.'s O'Fallon, Missouri facility, excluding office clerical and professional employees, guards, and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America,

UAW. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the

full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **June 23, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794 or by electronic mail at Region14@nrlb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EDT on **June 30, 2006**. This request may not be filed by facsimile.

Dated: June 16, 2006
at: Saint Louis, Missouri

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14